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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,434	03/09/2004	Daniel Lefebvre	BLA 10200	1856

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EXAMINER
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HOGUE, GARY CHAPMAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/796,434	Applicant(s) LEFEBVRE ET AL.	
	Examiner Gary C. Hoge	Art Unit 3611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,6-9,11-16 and 21-26 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9,11-16 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1, 9 and 15 are objected to because of the following informalities: In claim 1, line 4, it appears that "an" should be "a". In claim 9, line 3, it appears that "the" or "said" should be inserted before "price label". In claim 15, line 2, it appears that "the" or "said" should be inserted before "base". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims depend from claim 3, which has been cancelled.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Stabile (5,465,516).

Stabile discloses an apparatus comprising a base member comprising a support member 18, the support member having a front side and an opposite rear side, and at least one bracket 31

attached to the support member to allow the base member to be attached to a structure, the bracket having a first section **33** that is attached to the support member and a second section **35** that is attached to and angulated with respect to the first section, the first section having a top side **32** and opposite bottom side **32**, the second section being angulated with respect to the first section by a first predetermined angle, the support member being angulated with respect to the first section by a second predetermined angle that is measured between the plane within which the support member **18** lies and the top side **32** of the first section of the bracket **31** (see Fig. 3A); and a label containment member **22-27** attached to the front side of the support member. The recitation that the containment member is “a price label containment member” is merely a statement of intended use.

6. Claims 1, 2, 6-8, 16 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Smollar et al. (5,097,611).

Smollar discloses an apparatus comprising a base member **110** comprising a support member, the support member having a front side and an opposite rear side **170**, and at least one bracket **146** attached to the support member to allow the base member to be attached to a structure, the bracket having a first section **196** that is attached to the support member and a second section **198** that is attached to and angulated with respect to the first section, the first section having a top side and opposite bottom side, the second section being angulated with respect to the first section by a first predetermined angle, the support member being angulated with respect to the first section by a second predetermined angle that is measured between the plane within which the support member lies and the top side of the first section of the bracket (see Fig. 5); and a label containment member **104** attached to the front side of the support

member. The recitation that the containment member is "a price label containment member" is merely a statement of intended use.

Regarding claims 21 and 22, the containment member could allow an electronic shelf label or an electronic price label to be removably connected thereto.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smollar et al. (5,097,611) in view of Thompson (4,557,064).

Smollar discloses the invention substantially as claimed, as set forth above, including a channel for displaying a label. Thompson teaches that it was known in the art to provide a device to mate with such a channel, for the purpose of displaying supplementary information. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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provide the channel disclosed by Smollar with a device of the type disclosed by Thompson, in order to display supplementary information.

10. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smollar et al. (5,097,611) in view of Woodman et al. (4,753,026).

Smollar discloses the invention substantially as claimed, as set forth above. However, Smollar does not disclose a pair of guards attached to the ends of the elongate base member. Woodman et al. teaches that it was known in the art to provide guards at each end of an elongated sign (see, e.g., Fig. 14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the elongated member disclosed by Smollar with a pair of guards, as taught by Woodman, in order to prevent the sign from coming out of the containment member, and to improve the aesthetic appearance of the sign.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smollar et al. (5,097,611).

Smollar discloses the invention substantially as claimed, as set forth above. However, Smollar merely states that the base member “may be constructed from an appropriate plate or sheet material which will provide sufficient strength and durability for use in a retail or other public environment” (col. 7, lines 14-17), but does not specify a material. Because it is within the level of ordinary skill of a worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and since a person having ordinary skill in the art would know that a flexible, resilient plastic would be suitable for the fabrication of a base member of the type disclosed by Smollar, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the base member disclosed by

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Smollar from flexible, resilient plastic as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

***Allowable Subject Matter***

12. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 25 and 26 are allowed.

***Response to Arguments***

14. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gary C Hoge  
Primary Examiner  
Art Unit 3611

gch